



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2017-0913]

RIN 1625-AA00

Safety Zone; Ohio River, Cincinnati, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters of the Ohio River extending from mile marker (MM) 469.5 to MM 470.1. This action is necessary to provide for the safety of life on the navigable waters near Cincinnati, OH, during the Arthur Rozzi Pyrotechnics display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Sector Ohio Valley (COTP) or a designated representative.

DATES: This rule is effective from 7:45 p.m. through 8:45 p.m. on October 19, 2017.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2017-0913 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Petty Officer Joshua Herriott, Sector Ohio Valley, U.S. Coast Guard; telephone 502-779-5343, email Joshua.R.Herriott@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port Sector Ohio Valley
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. This action is necessary to ensure the safety of life during the Arthur Rozzi Pyrotechnics display. It is impracticable to publish an NPRM because the Coast Guard must establish this safety zone by October 19, 2017 and we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the *Federal Register*. Delaying this rule would be contrary to public interest in ensuring the safety of spectators and vessels during the event because immediate action is necessary to prevent possible loss of

life and property. Broadcast Notices to Mariners (BNM) and sharing information with the waterway users will update mariners of the restrictions, requirements and enforcement times during this temporary situation.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Sector Ohio Valley (COTP) has determined that potential hazards associated with the fireworks display from 7:45 p.m. through 8:45 p.m. on October 19, 2017 will be a safety concern for all navigable waters of the Ohio River extending from mile marker (MM) 469.5 to MM 470.1. The purpose of this rule is to ensure safety of life on the navigable waters in the temporary safety zone before, during, and after the Arthur Rozzi Pyrotechnics Display.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from 7:45 p.m. through 8:45 p.m. on October 19, 2017. The temporary safety zone will cover all waters of the Ohio River extending from MM 469.5 to MM 470.1. The duration of the temporary safety zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled fireworks display. No vessel or person will be permitted to enter the temporary safety zone without obtaining permission from the COTP or a designated representative.

Requests to enter the safety zone will be considered and reviewed on a case-by-case basis. The COTP may be contacted by telephone at 1-800-253-7475 or can be reached by VHF-FM channel 16. Public notifications will be made to the local maritime community prior to the event through the Local Notice to Mariners and Broadcast Notice

to Mariners.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-year of the temporary safety zone. The temporary safety zone will only be in effect for one hour and covers an area of the waterway extending less than one mile. The Coast Guard expects minimum adverse impact to mariners from the temporary safety zone activation as the event has been advertised to the public. Also, mariners may request authorization from the COTP or a designated representative to transit the temporary safety zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during

rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the special local regulation may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork

Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for Federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental Federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for Federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves special local regulated area that would prohibit entry for one hour and covers an area of the waterway extending less than one mile on the Ohio River. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and Recordkeeping Requirements, Security Measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1

2. Add § 165.T08-0913 to read as follows:

§ 165.T08-0913 Safety zone; Ohio River, Cincinnati, OH.

(a) Location. The following area is a safety zone: All navigable waters of the Ohio River between mile marker (MM) 469.5 and MM 470.1 in Cincinnati, OH.

(b) Effective period. This temporary safety zone will be enforced from 7:45 pm through 8:45 pm on October 19, 2017.

(c) Regulations. (1) In accordance with the general regulations in §165.23 of this part, entry into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Ohio Valley (COTP) or a designated representative. Persons or vessels desiring to enter into or pass through the zone must request permission from the COTP or a designated representative. They may be contacted on VHF-FM radio channel 16 or phone at 1-800-253-7465

(2) Persons and vessels permitted to deviate from this safety zone regulation and enter the restricted area must transit at the slowest safe speed and comply with all lawful directions issued by the COTP or a designated representative.

(d) Informational broadcasts. The COTP or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the temporary safety zone as well as any changes in the planned schedule.

Dated: October 10, 2017

M. B. Zamperini,
Captain, U.S. Coast Guard,
Captain of the Port, Sector Ohio Valley

[FR Doc. 2017-22594 Filed: 10/17/2017 8:45 am; Publication Date: 10/18/2017]